

U.S. Serial No.: 10/667,151
Group Art Unit 1611
Examiner Charlesworth Rae

STATUS OF CLAIMS

Claims 1-39 are pending in this application, claims 1, 27 and 33 being the independent claims. Claims 22-37 have been withdrawn due to a restriction requirement by the Examiner, and therefore, claims 1-21, 38 and 39 are currently under examination.

REMARKS

Rejection regarding Non-statutory Obviousness-Type Double Patenting

Claims 1-21 and 38-39 are rejected *provisionally* under the judicially created doctrine of non-statutory obvious-type double patenting under 103(a) as being unpatentable over claim 40 in view of claims 1-39 of co-pending U.S. Patent Application No. 11/124,828 ('828), now US Patent Publication No. 2006/0251581.

In response, Applicants respectfully traverse the non-statutory obviousness-type double patenting rejection and its accompanying remarks. In response to the Examiner's statement that Applicants' statement requesting that the rejection be held in abeyance pending the disposition of the '828 copending application is non-responsive, Applicants state that response to the merits of the provisional rejection is not required at this time. Specifically, Applicants respectfully assert their right to address the instant double patenting rejections if and when the "*provisional*" non-statutory obviousness-type double patenting rejection in each application is the only rejection remaining in that application. Pursuant to MPEP 804 I B,

If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

Thus, since the co-pending applications have not issued as patents and the claims may be amended in the future, Applicants respectfully exercise their right to address the provisional rejections at a future date, if and when the cited applications are issued as patents.